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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/054,454 | 11/13/2001 | Rodney Kern | 29020/98022B | 5281 |

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EXAMINER

JOHNSON, BLAIR M

| | |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
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3634

DATE MAILED: 08/05/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
10/054,454

Applicant(s)
Kern et al

Examiner
Blair M. Johnson

Art Unit
3634



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on _____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 14-16, 20, and 21 is/are allowed.
- 6) ☒ Claim(s) 1-13 and 17-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 2 6) ☐ Other:

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Claim Rejections - 35 USC § 112

1. Claim 17 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In line 10, "the panels respectively" is ambiguous since it is not clear which panel, the first or the second, comes first.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hale in view of Carlson et al.

Hale discloses first panel 4 and second panel 1 and weight 14. Since the wall has not been claimed, the recitation of the door panels in relation thereto is purely functional and given no weight other than the requiring that Hale be "capable" of being so related to a wall. In this case, the wall could extend perpendicular to the wall 2 as shown.

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What is not shown is the main drive mechanism. However, the use of motors to open bifold doors is well known as illustrated by Carlson et al. It would have obvious to modify Hale whereby his device has a motor to open the door.

Double Patenting

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321© may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 1,2,11 and 12 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,352,097 in view of Allen.

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Claim 1 of '097 discloses everything in these claims except the main drive mechanism. However, providing a main driving mechanism in combination with an auxiliary drive device is taught by Allen at M. In view of this teaching, it would have been obvious to modify claim 1 of '097 to have such a main driving mechanism.

6. Claim 3 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 2 of U.S. Patent No. 6,352,097 in view of Allen.

Allen is applied here as above.

7. Claim 4 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3 of U.S. Patent No. 6,352,097 in view of Allen.

Allen is applied here as above.

8. Claim 5 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 4 of U.S. Patent No. 6,352,097 in view of Allen.

Allen is applied here as above.

9. Claim 6 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1,4 and 5 of U.S. Patent No. 6,352,097 in view of Allen.

Allen is applied here as above.

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10. Claim 7 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 6 of U.S. Patent No. 6,352,097 in view of Allen.

Allen is applied here as above.

11. Claim 8 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 7 of U.S. Patent No. 6,352,097 in view of Allen.

Allen is applied here as above.

12. Claims 1-3,5,6,11 and 12 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 8 of U.S. Patent No. 6,352,097 in view of Allen.

Allen is applied here as above.

13. Claim 4 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 8 and 9 of U.S. Patent No. 6,352,097 in view of Allen.

Allen is applied here as above.

14. Claim 7 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 8 and 10 of U.S. Patent No. 6,352,097 in view of Allen.

Allen is applied here as above.

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15. Claim 8 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 8 and 11 of U.S. Patent No. 6,352,097 in view of Allen.

Allen is applied here as above.

16. Claim 9 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 8 and 12 of U.S. Patent No. 6,352,097 in view of Allen.

Allen is applied here as above.

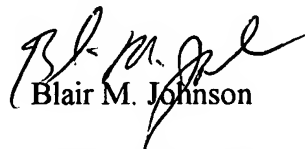
17. Claims 10,13 and 18 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 8 and 13 of U.S. Patent No. 6,352,097 in view of Allen.

Allen is applied here as above.

Allowable Subject Matter

18. Claims 14-16,20 and 21 are allowed.

19. Claim 17 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.


Blair M. Johnson

Primary Examiner
Art Unit 3634

July 29, 2002
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